

# Exhibit 26

THOMAS BARDEN  
Keith Fischer, et al. vs GEICO

August 08, 2024  
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Page 1		Page 3
1		1 THOMAS BARDEN
2	IN THE UNITED STATES DISTRICT COURT	2 APPEARANCES CONTINUED:
3	FOR THE EASTERN DISTRICT OF NEW YORK	3 On behalf of the Defendant GEICO:
4	----- )	4 DUANE MORRIS, LLP
5	KEITH FISCHER, MICHAEL O'SULLIVAN, )	5 190 South LaSalle Street - Suite 3700
6	JOHN MOESER, LOUIS PIA, THOMAS ) Case No.:	6 Chicago, Illinois 60603
7	BARDEN, CONSTANCE MANGAN, and ) 2:23 Civ. 2848	7 (312) 499-0198
8	CHARISE JONES, individually and ) (GRB) (ARL)	8 Email: tealberty@duanemorris.com
9	on behalf of all others similarly )	9 BY: TIFFANY ALBERTY, ESQUIRE
10	situated, )	10
11	Plaintiffs, )	11 Also On behalf of the Defendant GEICO:
12	- v - )	12 DUANE MORRIS, LLP
13	GOVERNMENT EMPLOYEES INSURANCE )	13 1540 Broadway - 14th Floor
14	COMPANY d/b/a GEICO, )	14 New York, New York 10036
15	Defendant. )	15 (212) 471-1856
16	----- )	16 Email: gsslotnick@duanemorris.com
17		17 BY: GREGORY SLOTNICK, ESQUIRE (Via Zoom)
18	VIDEOTAPED DEPOSITION OF THOMAS BARDEN	18
19		19 ALSO PRESENT:
20		20 SILVIO FACCHIN, Legal Video Specialist
21		21 Esquire Deposition Solutions
22		22
23	Reported by:	23
24	Kim M. Brantley	24
25	Job No: J11541508	25
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1	THOMAS BARDEN	1 THOMAS BARDEN
2	Thursday, August 8, 2024	2 P R O C E E D I N G S
3	Time: 9:59 a.m.	3 THE LEGAL VIDEO SPECIALIST: This is
4	Videotaped deposition of THOMAS BARDEN, held	4 the media labeled number one in the video recorded
5	at Duane Morris, LLP, 1540 Broadway, 14th Floor,	5 deposition of Thomas Barden in the matter of Keith
6	New York, New York, before Kim M. Brantley, Court	6 Fischer, et al., versus Government Employee
7	Reporter and Notary Public of the State of New	7 Insurance Company, doing business as GEICO.
8	York.	8 This deposition is being taken in New
9		9 York City, New York, on August 8th, 2024. My name
10	APPEARANCES:	10 is Silvio Facchin. I am a certified legal video
11	On behalf of the Plaintiffs:	11 specialist; the court reporter is Kim Brantley,
12	OUTTEN & GOLDEN, LLP	12 and we're both representing Esquire Deposition
13	1225 New York Avenue NW - Suite 1200B	13 Solutions.
14	Washington, DC, 20007	14 We are now going on the record. The
15	(202) 847-4400	15 time is 10:00 a.m.
16	Email: hcolechu@outtengolden.com	16 Counsel will state their appearances
17	zdsouza@outtengolden.com	17 for the record.
18	BY: HANNAH COLE-CHU, ESQUIRE	18 MS. COLE-CHU: For the plaintiffs,
19	ZARKA SHABIR DSOUZA, ESQUIRE	19 Hannah Cole-Chu, from Outten & Golden, and
20		20 with me is Zarka DSouza from Outten & Golden
21		21 as well.
22		22 MS. ALBERTY: And Tiffany Alberty, on
23		23 behalf of GEICO, along with Gregory Slotnick.
24		24 THE LEGAL VIDEO SPECIALIST: Will the
25		25 court reporter please swear in the witness.

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1	THOMAS BARDEN	1	THOMAS BARDEN
2	Q. When you resigned in December, were you	2	A. Yes.
3	still within that Albany territory?	3	Q. And who was that?
4	A. Yes.	4	A. Craig Costanzo.
5	Q. During your time with GEICO, did you	5	Q. How long did that occur for?
6	ever transition out of the Albany territory?	6	A. Three to four months.
7	A. No.	7	Q. So if my math serves me right, then
8	Q. I believe in the complaint, in your	8	that would have been between September of 2019 to
9	declaration you described yourself as a special	9	about end of December of 2019 into January of 2020
10	investigator. Is that the same as the field	10	that you would have shadowed Craig Costanzo (sic)?
11	investigator position that we just spoke about?	11	A. Yes.
12	A. I believe field investigator is	12	Q. What were the requirements for your
13	encompassed within all special investigators.	13	position?
14	Q. Would there be other titles then that	14	MS. COLE-CHU: Objection.
15	you would anticipate or presume that are special	15	THE WITNESS: Requirements? As far as?
16	investigators along with your field investigator	16	BY MS. ALBERTY:
17	position?	17	Q. You know, if there was any type of
18	MS. COLE-CHU: Objection.	18	education requirements --
19	THE WITNESS: I would assume that there	19	A. Oh.
20	are other titles that people were given.	20	Q. -- any experience requirements.
21	BY MS. ALBERTY:	21	A. I'm not sure what their requirements
22	Q. Do you know what those other titles	22	were.
23	would have been?	23	Q. Do you know if there was a level
24	A. I'm not sure what they would have been.	24	sixty-six field investigator role at GEICO?
25	Q. Okay. I believe you indicated a level	25	A. I don't know.
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1	THOMAS BARDEN	1	THOMAS BARDEN
2	sixty-five special investigator. What does that	2	Q. Fair to say because you were a level
3	mean?	3	sixty-five, that's the only knowledge that you
4	A. Basically the level I was assigned to.	4	have about that position is within that level
5	I'm not sure what that level indicates.	5	base, correct?
6	Q. Okay. Were you ever any other level	6	MS. COLE-CHU: Objection.
7	while you were with GEICO?	7	THE WITNESS: Yes.
8	A. No.	8	BY MS. ALBERTY:
9	Q. As the -- as the field investigator,	9	Q. As a senior field investigator, what
10	what were your duties and responsibilities?	10	were your hours?
11	A. We were --	11	MS. COLE-CHU: Objection.
12	MS. COLE-CHU: Objection. Sorry.	12	THE WITNESS: Hours were basically
13	THE WITNESS: We were assigned auto	13	eight hours a day.
14	fraud investigative cases. So our job was to	14	BY MS. ALBERTY:
15	investigate the fraud that was indicated.	15	Q. Were they set times?
16	BY MS. ALBERTY:	16	A. When I was hired, I was told that our
17	Q. And that would have been within that	17	hours were flexible so that we could adjust to
18	Albany territory that you told me about?	18	whatever is required during the day regarding
19	A. Yes.	19	in-person interviews, scene canvasses, EUOs that
20	Q. Did you supervise anyone?	20	had to be done, things like that, so that we
21	A. No.	21	could adjust our schedule according to that.
22	Q. Did anyone shadow you?	22	Q. Did you say EUOs?
23	A. No.	23	A. Examinations under oath.
24	Q. When you first started, did you shadow	24	Q. Okay, thank you.
25	anyone?	25	A. Sorry.

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<p>1                   THOMAS BARDEN</p> <p>2</p> <p>3 BY MS. ALBERTY:</p> <p>4     Q. Fair to say then you're assuming that</p> <p>5 from July or August of 2020 up and until December</p> <p>6 of '22 that you exceeded your forty-hour work week</p> <p>7 between fifteen to twenty hours, right?</p> <p>8     MS. COLE-CHU: Objection.</p> <p>9     THE WITNESS: I'm not assuming. I know</p> <p>10 I did.</p> <p>11 BY MS. ALBERTY:</p> <p>12    Q. But you didn't itemize it?</p> <p>13    A. I did not write it down and itemize</p> <p>14 every minute, no.</p> <p>15    Q. Did you tell anyone that you were</p> <p>16 working approximately fifty-five to sixty hours a</p> <p>17 week during that time, and by this time I'm</p> <p>18 talking around the July time period?</p> <p>19    A. We had meetings with supervisors and</p> <p>20 discussed the time that we were actually putting</p> <p>21 into cases, and how much time we were spending</p> <p>22 working off the clock, yes.</p> <p>23    Q. How -- it's hard, because we're working</p> <p>24 in a few different time periods, right?</p> <p>25    So, for -- let's start COVID 2020,</p>	<p>Page 101</p> <p>1                   THOMAS BARDEN</p> <p>2 Syracuse, Weedsport, which is the other side of</p> <p>3 Syracuse, having in-person meetings with Mr. Janik</p> <p>4 and other team members at that time.</p> <p>5     Q. To the best of your recollection do you</p> <p>6 remember if that happened in '21 or '22?</p> <p>7     A. I don't remember when we were opened</p> <p>8 back up to do that.</p> <p>9     Like I said, it went -- you know, the</p> <p>10 opening of COVID went in steps, as everybody</p> <p>11 knows. We were allowed to go out on the road and</p> <p>12 do scene canvasses, but not allowed to meet with</p> <p>13 people. Once we were allowed to meet with people</p> <p>14 again, then we started having meetings again.</p> <p>15 So -- and I'm not sure what that time frame is, to</p> <p>16 be honest with you.</p> <p>17    Q. All right, transitioning to number</p> <p>18 nine, you state, "GEICO returned to limited field</p> <p>19 operations in or about the November 2021 time</p> <p>20 frame."</p> <p>21    What does that mean? What does</p> <p>22 "limited field operations" mean?</p> <p>23    A. Just -- just, like I just said, we were</p> <p>24 allowed to do scene canvasses, you know, things</p> <p>25 that didn't take interaction with public</p>
<p>1                   THOMAS BARDEN</p> <p>2 March --</p> <p>3     A. Mm-hmm.</p> <p>4     Q. How frequent were meetings occurring?</p> <p>5     A. I believe he -- meaning Mr. Janik --</p> <p>6 tried to have a complete team meeting with</p> <p>7 everyone quarterly. So every two to three months,</p> <p>8 he would travel, we would meet. This is prior</p> <p>9 to -- obviously prior to March. After that it</p> <p>10 would be either Zoom, or a conference call, or</p> <p>11 things like that. He would try to do it that way.</p> <p>12    Q. Sure, but still under that time</p> <p>13 condition of quarterly, regardless of the forum?</p> <p>14    A. I -- I believe, from what I understand,</p> <p>15 that was his schedule to do that. That was his</p> <p>16 requirement to do that, yes.</p> <p>17    Q. Do you recall any of these quarterly</p> <p>18 meetings being in person?</p> <p>19    A. Not -- at that time, once we were</p> <p>20 allowed to meet again, yes, then we had meetings</p> <p>21 in person again.</p> <p>22    Q. Do you remember when that occurred in</p> <p>23 time?</p> <p>24    A. I don't remember the dates.</p> <p>25    They -- I remember traveling to</p>	<p>Page 102</p> <p>1                   THOMAS BARDEN</p> <p>2 basically.</p> <p>3     We weren't -- we still weren't allowed</p> <p>4 to do interviews in person with claimants, things</p> <p>5 like that, but we were allowed to at least go on</p> <p>6 the road and do scene canvasses.</p> <p>7     I think we were allowed to go to</p> <p>8 certain police agencies that were allowed --</p> <p>9 allowing us to come there, pick up police reports,</p> <p>10 and that depended on the areas, things like that,</p> <p>11 so.</p> <p>12    Q. Did you ever go back to the one hundred</p> <p>13 percent of being able to do your position like it</p> <p>14 was in 2020, January 2020?</p> <p>15    A. It did expand as we went through. We</p> <p>16 were allowed to meet with -- with claimants and</p> <p>17 interview them in person again. So I am guessing,</p> <p>18 yeah, probably.</p> <p>19     I never went back to meeting them in</p> <p>20 their homes. I always met them at a remote</p> <p>21 location, but -- and I think most everybody else</p> <p>22 did that same thing. But, yeah, it eventually got</p> <p>23 back to where we were meeting people in person,</p> <p>24 doing in-person interviews.</p> <p>25     We never went back as far as when I</p>

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1	THOMAS BARDEN	1	THOMAS BARDEN
2	accurately and correctly?	2	recall how many days GEICO would give you as a
3	MS. COLE-CHU: Objection.	3	field investigator to investigate a claim?
4	THE WITNESS: Yes.	4	A. Yeah, I don't recall at this point.
5	BY MS. ALBERTY:	5	No.
6	Q. Do you know what would happen once you	6	Q. Okay, let's turn to number thirteen.
7	had reported it, where it went then thereafter?	7	It says, "GEICO's performance metrics and ratings
8	A. It's -- far as I know it stayed within	8	determined whether I was entitled to an annual
9	that system.	9	raise.
10	Q. Do you know if anybody would review it?	10	"If I failed to meet them they could
11	A. Yes.	11	also lead to disciplinary action such as being put
12	Q. And who was that?	12	on a coaching plan that will eventually lead to
13	A. Mr. Janik.	13	termination."
14	Q. Anyone else, to your knowledge?	14	What's your basis for believing that
15	MS. COLE-CHU: Objection.	15	disciplinary action at GEICO was based on the
16	THE WITNESS: Not that I know of.	16	performance metrics that you line itemized in
17	BY MS. ALBERTY:	17	number twelve?
18	Q. Did you keep any separate personal	18	MS. COLE-CHU: Objection.
19	system that helped maintain your task list for	19	THE WITNESS: Well, because I was -- I
20	your cases, outside of the GEICO software we just	20	was contacted at one point by Mr. Janik who
21	talked about?	21	told me that I didn't actually meet criteria
22	A. Not that I recall, no.	22	for a raise at that particular time during
23	Q. Other than this GEICO software, was	23	the year, and it was due to my performance
24	there any other records that you created in any	24	evaluation.
25	other capacities, so whether that was in Microsoft	25	BY MS. ALBERTY:
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1	THOMAS BARDEN	1	THOMAS BARDEN
2	Word, Power Point.	2	Q. When you were ineligible for a raise,
3	I don't know how software efficient you	3	did he, for example, specifically say, "Hey, on
4	are, but anything else that would keep records of	4	the Smith matter I notice you didn't go out and
5	how much work you completed each day?	5	canvas the scene. So because you didn't hit that
6	A. Not that I recall, no.	6	performance metric for that case, this is one of
7	Q. And case reports, were those a part of	7	the reasons why you're ineligible for a raise"?
8	your job duties?	8	MS. COLE-CHU: Objection.
9	A. Yes.	9	BY MS. ALBERTY:
10	Q. And these various task items such as	10	Q. Was it ever that specific?
11	witness interviews, canvassing a scene, obtaining	11	A. I don't believe it was conveyed in that
12	a police report, were those a part of your duties	12	specific content.
13	and responsibilities, insuring completing your	13	Q. Do you recall if there was any type of
14	auto theft cases?	14	written policy that stated that the metrics were
15	A. Yes.	15	linked to discipline?
16	Q. Do you know how long GEICO would give	16	A. Well, I know I got put on, excuse me,
17	you to investigate a case?	17	on a coaching plan because of poor performance. I
18	MS. COLE-CHU: Objection.	18	don't recall at this time if it was directly
19	THE WITNESS: I'm not -- I don't	19	related to a performance rating, or if it was just
20	recall.	20	simply an overall -- you know, like a specific
21	BY MS. ALBERTY:	21	performance rating period is what I mean, or if it
22	Q. Was one of the things in the	22	was just kind of an ongoing supervisory notation
23	performance metrics for number twelve you indicate	23	or they noticed happening.
24	it's "how many days I took to close out a case."	24	Q. When you were put on your coaching, was
25	So as you sit here today, you don't	25	it specifically itemized that, for example, you

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<p>1                   THOMAS BARDEN</p> <p>2 investigator employee to complete certain tasks on</p> <p>3 new cases such as conducting background checks and</p> <p>4 other initial steps for a case.</p> <p>5                "This gave me time to catch up on my</p> <p>6 existing cases and close them more quickly,</p> <p>7 although I was working the same number of hours,</p> <p>8 but to the best of my knowledge GEICO did not</p> <p>9 ultimately continue this program for special</p> <p>10 investigators."</p> <p>11               What is your basis for believing that</p> <p>12 GEICO implemented a pilot program like this?</p> <p>13           A. That's what was told to me by Bill</p> <p>14 Newport and Chet Janik.</p> <p>15           Q. Was this during the initial phone call</p> <p>16 when you were placed on the coaching plan?</p> <p>17           A. I believe it was right around that</p> <p>18 time. It happened at sometime after that. It</p> <p>19 wasn't like something that happened immediately.</p> <p>20           Q. Paragraph fourteen seems to indicate</p> <p>21 that the pilot program was discontinued.</p> <p>22           What's your basis for believing that?</p> <p>23           A. From what I understand that was -- when</p> <p>24 I left that was when that program ended. That was</p> <p>25 what I understood when I left. Because I asked</p>	<p>Page 173</p> <p>1                   THOMAS BARDEN</p> <p>2 A. I don't know.</p> <p>3 Q. And what did Marie do for you?</p> <p>4 A. Basically just the initial background</p> <p>5 investigation of -- of the initial claimant in the</p> <p>6 case.</p> <p>7 Q. Did you ever meet Marie in person?</p> <p>8 A. No.</p> <p>9 Q. Did you speak to her?</p> <p>10 A. I spoke to her on the phone</p> <p>11 occasionally.</p> <p>12 Q. Did she ever indicate to you that this</p> <p>13 was a temporary pilot program?</p> <p>14 A. I don't think so.</p> <p>15 Q. So ultimately Marie came in, and she</p> <p>16 was helping you with your duties in running</p> <p>17 background checks and the initial steps for your</p> <p>18 cases.</p> <p>19               Is that right?</p> <p>20 A. Correct.</p> <p>21 Q. And then these were tasks that you</p> <p>22 typically did in your custom and practice as a</p> <p>23 field security investigator?</p> <p>24           MS. COLE-CHU: Objection.</p> <p>25           THE WITNESS: Yes.</p>
<p>1                   THOMAS BARDEN</p> <p>2 Chet Janik when I left if they were going to</p> <p>3 continue that, and he said no, that was it.</p> <p>4           Q. When did this conversation occur?</p> <p>5           A. With my supervisor?</p> <p>6           Q. Yeah.</p> <p>7           A. When I had decided to leave the</p> <p>8 company.</p> <p>9           Q. Was there -- I'm trying to think in</p> <p>10 time. So it's December of '22 is when you quit.</p> <p>11           Was it the same time you tendered your</p> <p>12 resignation? Was it a separate conversation after</p> <p>13 that?</p> <p>14           A. I don't know if it was contiguous when</p> <p>15 I told him I was leaving. It may have been after</p> <p>16 that. I'm -- I'm not sure when that happened.</p> <p>17           Q. Who was --</p> <p>18           A. -- or when I asked him about that.</p> <p>19           Q. Who was the person that was assigned to</p> <p>20 you?</p> <p>21           MS. COLE-CHU: Objection.</p> <p>22           THE WITNESS: I believe her name was</p> <p>23 Marie, I believe.</p> <p>24 BY MS. ALBERTY:</p> <p>25           Q. Do you know what her title was?</p>	<p>Page 174</p> <p>1                   THOMAS BARDEN</p> <p>2 BY MS. ALBERTY:</p> <p>3           Q. How long was Maria assigned to you?</p> <p>4           A. I don't recall.</p> <p>5           Q. Was she still working with you in</p> <p>6 December when you left?</p> <p>7           A. She was still there. I don't recall if</p> <p>8 she was still doing that with my cases when I</p> <p>9 resigned.</p> <p>10           Q. If the coaching took place, and it was</p> <p>11 only supposed to last two or three months, and it</p> <p>12 took place in the spring or the summer of '22, it</p> <p>13 then in theory would have been phased out by the</p> <p>14 fall?</p> <p>15           Did you ever have a subsequent</p> <p>16 conversation with Bill or with Chet that now</p> <p>17 you've been removed off the coaching plan?</p> <p>18           A. I don't recall if I did or not. I</p> <p>19 don't recall that conversation, if it happened.</p> <p>20           Q. Is it your understanding that you were</p> <p>21 still then on this coaching plan until the end of</p> <p>22 your employment?</p> <p>23           A. No, I don't believe so.</p> <p>24           Q. So you --</p> <p>25           A. I just don't recall the conversation</p>

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